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No. 85-1484

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

OWEN STEEL COMPANY, INC., OWEN SUPPLY COMPANY, INC., OWEN ELECTRIC STEEL COMPANY OF SOUTH CAROLINA, OWEN INDUSTRIAL PRODUCTS, INC., OWEN JOIST CORPORATION, OWEN MISCELLANEOUS METALS, INC. AND SOUTH CAROLINA STEEL CORPORATION,

Petitioners,

vs.

SOUTH CAROLINA TAX COMMISSION, JOHN T. WEEKS AS CHAIRMAN, CHARLES N. PLOWDEN AND S. HUNTER HOWARD, JR., AS COMMISSIONERS, AND CONSTITUTING THE SOUTH CAROLINA TAX COMMISSION; AND SOUTH CAROLINA TAX BOARD OF REVIEW, JOHN W. FOSTER, AS CHAIRMAN, ISADORE BOGOSLOW, MARGARET R. DIGGS, VANCE B. DRAWDY, PAUL HEMPHILL, JOHN C. B. SMITH AND RONNIE L. SMITH AS MEMBERS, AND CONSTITUTING THE SOUTH CAROLINA TAX BOARD OF REVIEW,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of South Carolina

REPLY BRIEF OF PETITIONERS

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REPLY BRIEF OF PETITIONERS

Pursuant to Rule 22.5 of the Rules of this Court, Petitioners submit the following reply to the brief filed by the Respondents.

Respondent's Brief Concedes The Question Of Jurisdiction And Simply Reargues The Merits Of The Case

Respondents concede the critical jurisdictional issue before the Court. Their brief is essentially no more than an appellate brief that reargues the merits of the case and disregards a host of decisions of this Court addressing the principles and precepts that govern the exercise of jurisdiction to review the final judgment of a state's highest court.[1] Respondents' neglect of this Court's opinions as to the question of jurisdiction is reminiscent of the South Carolina Supreme Court's cavalier treatment of the Court's decision in *Sioux City Bridge Co. v. Dakota County, Nebraska*, 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340 (1923). Petition for Writ of Certiorari, at 14 n.8. Indeed, it is this attitude of disregard or casual concern for the opinions of this Court that compels Petitioners to seek to vindicate their 14th Amendment rights herein.

Respondents' brief effectively confirms that the state court decision rests primarily on federal law, is interwoven with federal law and is not supported by adequate and independent state law grounds. Jurisdiction, therefore, is conceded by Respondents, and their brief merely restates the question of whether there was intentional discrimination, concluding that "[t]wo agencies and two of the courts including the highest of the state held that there was none." Respondents' Brief in Opposition, at 22. Instead of explaining why the "two agencies and two courts"

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[1] *See*, e.g., cases cited in Petition for Writ of Certiorari, at 10 n.6.

do not cite a single state case to support their decisions, Respondents (1) repeat their position as to the question of intentional and systematic discrimination, (2) reargue the merits of cyclical revaluation programs and (3) restate the alleged "catastrophic effect" of remedying "the inequity." Although inappropriate to the question of jurisdiction, Petitioners feel compelled to reply.

(1) Intentional And Systematic Discrimination

Respondents' brief repeatedly emphasizes the principal issue that was before the two agencies and two lower courts, to wit: whether there was intentional and systematic discrimination in contravention of the 14th Amendment. Respondents' Brief in Opposition, at 7, 10, 18, 22 and 23. This Court has left no doubt that the terms "systematic and intentional" are key terms in determining whether there has been contravention of 14th Amendment rights. The following quote from *Sioux City Bridge Co. v. Dakota County, Nebraska*, 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340 (1923) clearly recognizes this:

> In the case of Sunday Lake Iron Co. v. Wakefield Twp. 247 U.S. 350, 352, 353, 62 L.ed. 1154-1156, 38 Sup. Ct. Rep. 495, this court said:
>
> "The purpose of the equal protection clause of the 14th Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that *intentional, systematic*

> *undervaluation* by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property. Raymond v. Chicago Union Traction Co. 207 U.S. 20, 35, 37, 52 L.ed. 78, 87, 88, 28 Sup. Ct. Rep. 7, 12 Ann. Cas. 757."

Id., 260 U.S. at 445, 43 S.Ct. at 191, 67 L.Ed. at 342 (1923). (Emphasis supplied.)

The repeated use of "systematic and intentional" as 14th Amendment terms of analysis and the state court's exclusive reliance upon federal case law analysis in addressing the 14th Amendment question leads to the conclusion that the Supreme Court of South Carolina decided this case solely on federal grounds. Accordingly, and in view of the fact that its decision is directly in conflict with the abovequoted settled law affirmed by this Court in *Chicago Union Traction, Sunday Lake* and *Sioux City Bridge*, the Court should accept jurisdiction of this case.[2]

(2) Cyclical Revaluation Programs Are Not Relevant To The Issue Herein

Respondents rely heavily on decisions of other state courts holding that there is no denial of equal protection where the assessing authority is in the midst

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[2] Bear in mind that, notwithstanding the decision of the state court, the record is replete with evidence as to the *admittedly* long-standing, systematic and intentional actions of both the Tax Commission and the county assessors that resulted in the gross disparity and discrimination herein. Petition for Writ of Certiorari, at 4-6, 23a, 24a.

of a cyclical revaluation program.[3] Those cases, however, are not relevant in view of the fact that the case herein does not address an ongoing, cyclical revaluation program. Here the issue involves equalization and appraisal of all property in the taxing districts (counties) for the first time in *sixty-seven* years.[4] In effect, the state court holding is that at least sixty-six years can elapse and result in such gross disparity that virtually half of the total assessed value of the taxing district (county) is appraised at less than forty (40%) percent of fair market value, and such does not constitute a violation of 14th Amendment rights, as long as equalization occurs "the next year". Therefore, in reality, the state court has adopted the principle that sixty-six years of systematic and intentional gross disparity of appraisals is permissible as long as equalization is finally accomplished "the next year." This is totally unreasonable and repugnant to the 14th Amendment rights of those citizens whose property is repeatedly appraised at full fair market value while property of others, aggregating hundreds of millions of dollars, is consistently appraised grossly below the minimum standard required by law. Obviously, cases addressing three, four and six year cyclical revaluation programs are clearly not applicable to the circumstances herein.[5]

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[3] *See*, Petition for Writ of Certiorari, at 30a, for cases holding otherwise. Petitioners invite the Court's particular attention to *Perkins v. County of Albemarle*, 214 Va. 240, 198 S.E.2d 626 (1973), *McLennan v. Undercofler*, 222 Ga. 302, 149 S.E.2d 705 (1966), and *Undercofler v. Seaboard Air Line Railroad Co.*, 222 Ga. 822, 152 S.E.2d 878 (1966) for decisions granting taxpayers the relief contended under the 14th Amendment, notwithstanding ongoing state-wide or county-wide revaluation programs.

[4] *See*, Petition for Writ of Certiorari, at 5, 6 n.2.

[5] Respondents state that the 14th Amendment should be ap-

(3) Alleged "Catastrophic Effect" Of Remedying The Inequity Is Easily Avoidable

Respondents allege that remedying "the inequity" would have "catastrophic effect upon the counties." Respondents' Brief in Opposition, at 6, 17. Petitioners have responded to this allegation throughout the course of the litigation below and, in like manner, they submit for this Court's consideration the fairly recent property tax decision by the Supreme Court of South Carolina in favor of a taxpayer, a decision which includes a classic method of providing relief to the taxpayer without causing disruption of county operations.

> . . . [W]e are cognizant of the disruptive effect today's decision could have on the financial operation of the school system. We hold that today's decision shall be applied prospectively beginning with the next tax year, with one exception. Appellant Hinson

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plied in a "real world." Respondents' Brief in Opposition, at 25. Respondents' "History" suggests that the requirement of uniformity and equality of valuation arose for the first time in 1975 with the adoption of Act 208 of 1975, Jt. Res. 248. Respondents' Brief in Opposition, at 23-25. That legislation, however, and South Carolina Property Tax Regulation 117-115 promulgated thereunder, do no more than recognize the constitutional requirement of equality and uniformity which has been in effect in South Carolina for over one hundred (100) years. S.C. Const. Art. IX, §1 (1868). Indeed, the constitutional requirement of equality and uniformity was adopted forty-seven (47) years *before* the Tax Commission was organized in 1915, admittedly, for the purpose of equalizing property. Petition for Writ of Certiorari, at 6 n.2. Thus, the equalization that was finally accomplished for the first time in 1982 ("the next year"), occurred *one hundred fourteen* years after the standard of equality and uniformity was established in 1868. Although this may be Respondents' idea of a "real world," such can hardly be described as an ongoing, three, four or six year cyclical revaluation program.

> is entitled to a refund of the property taxes which he paid under protest.

Crow, et al. v. McAlpine, et al., 277 S.C. 240, 245, 285 S.E.2d 355, 358 (1981).

There is no reason why the above-described method of granting relief could not have been applied by the court below, thereby eliminating the possibility of any alleged "catastrophic effect" occurring.

CONCLUSION

In the 1983 case of *Michigan v. Long*, 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983), this Court held:

> . . . [I]t cannot be doubted that there is an important need for uniformity in federal law, and that this need goes unsatisfied when we fail to review an opinion that rests primarily upon federal grounds and where the *independence* of an alleged state ground is not apparent from the four corners of the opinion.

Id., 463 U.S. at 1040, 103 S.Ct. at 3475, 77 L.Ed.2d at 1214. (Emphasis in the original.)

A thorough review of the opinion of the Supreme Court of South Carolina and the Respondents' brief leads one to the inescapable conclusion that it is a decision which rests primarily, if not exclusively, upon federal grounds.

In view of the principles and precepts established in *Michigan v. Long, supra*; in view of the abundant evidence establishing long-standing, admittedly systematic and intentional disparity of appraisals; in view of the conflict of the lower court's decision with that of settled law affirmed by this Court in *Raymond v. Chicago Union Traction Co.*, 207 U.S. 20, 28 S.Ct.

7, 52 L.Ed.78 (1907), *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350, 38 S.Ct. 495, 62 L.Ed. 1154 (1918), and *Sioux City Bridge Co. v. Dakota County, Nebraska*, 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340 (1923); in view of the clear conflict of the lower court's decision with that of the Court of Appeals for the Sixth Circuit in *Louisville & Nashville Railway v. Public Service Commission of Tennessee*, 433 F.Supp. 162 (M.D. Tenn. 1978), *aff'd*, 631 F.2d 426 (6th Cir. 1980), *cert. den.*, 450 U.S. 959, 101 S.Ct. 1418 (1981); and in view of the conflict of the lower court's decision with prior decisions of the Supreme Court of South Carolina and with a host of decisions of other state courts of last resort, there is special and important reason for this Court to grant the Petition for Writ of Certiorari and to review the decision of the Supreme Court of South Carolina.

Respectfully submitted,

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